



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0749]

RIN 1625-AA00

Safety Zone; Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone during the 2016 Fautasi Ocean Challenge canoe race in Pago Pago Harbor, American Samoa, on November 11 and 25, 2016. This action is necessary to safeguard the participants and spectators, including all crews, vessels, and persons on the water in Pago Pago Harbor during the event. This regulation will functionally close the port to vessel traffic during the race, but will not require the evacuation of any vessels from the harbor. Entry into, transiting, or anchoring in the harbor would be prohibited to all vessels not registered with the sponsor as participants or not part of the race patrol, unless specifically authorized by the Captain of the Port (COTP) Honolulu or a designated representative. Vessels who are already moored or anchored in the harbor seeking permission to remain there shall request permission from COTP unless deemed a spectator vessel that is moored to a waterfront facility within the safety zone. We invite your comments on this notice of proposed rulemaking (NPRM).

DATES: Comments and related material must be received by the Coast Guard on or before

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0749 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541-4359, email nicolas.a.jarboe@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port, Honolulu
CFR	Code of Federal Regulations
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On June 1, 2016, the Coast Guard received formal notification from the American Samoa Government that the 2016 Fautasi Ocean Challenge is scheduled to occur in Pago Pago Harbor on November 11 and 25, 2016. This annual event has strengthened local tradition for over a century. The event will consist of a series of races entirely within Pago Pago Harbor between longboats with paddling crews of 32-48 persons each. It is anticipated that a large number of spectator pleasure craft will be drawn to the event. Spectator vessels and commercial vessel

traffic will pose a significant safety hazard to the longboats, longboat crew members, and other persons and vessels involved with the event.

The purpose of this proposed rulemaking is to minimize vessel traffic in Pago Pago Harbor before, during, and after the scheduled event to safeguard persons and vessels during the longboat races. The Captain of the Port, Honolulu (COTP), proposes to establish a temporary safety zone for Pago Pago Harbor. A safety zone is a water area, shore area, or water and shore area, for safety or environmental purposes, of which access is limited to authorized persons, vehicles, or vessels. The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

III. Discussion of Proposed Rule

This rule will create a temporary safety zone in Pago Pago Harbor. The safety zone will close the harbor to all vessels not authorized by the COTP for entry into, transiting, or anchoring within the port for the duration of the event. The COTP will authorize registered participants, support vessels, and enforcement vessels to enter and remain in the zone. No other vessels would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The harbor will remain closed until the Coast Guard issues an “All Clear” after races have concluded and the harbor is deemed safe for normal operations. This rule will not require any vessel already moored to evacuate the port, provided that they are moored in such a way that they do not interfere with the progress of the event. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive

Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. This determination is based on the size, location, duration, and time-of-day of the safety zone. Accordingly, this NPRM has not been reviewed by the Office of Management and Budget.

Under this NPRM, the Coast Guard would issue a Broadcast Notice to Mariners with information pertaining to the safety zone via VHF-FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Some owners or operators of vessels intending to transit the safety zone may be small entities and may not be authorized to do so. However, given the short duration of this proposed temporary rule, this would not create a significant economic impact on a substantial number of

these entities. Moreover, the rule would allow all vessels to seek permission from the Coast Guard to enter the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

If you believe this proposed rule would have substantial direct effects on federalism or tribal governments, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary and limited safety zone in Pago Pago Harbor. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1

of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal

Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS.

1. The authority citation for part 165 continues to read as follows:

Authority:

33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0749 to read as follows:

§ 165.T14-0749 SAFETY ZONE; PAGO PAGO HARBOR, AMERICA SAMOA.

(a) **Location.** The following area is a safety zone: Breakers Point (eastern edge of Pago Pago Harbor entrance) thence southeast to 14° 18'47"S, 170° 38'54.5"W thence southwest to 14° 19'03"S, 170° 39'14"W, thence northwest to Tulutulu Point and then following the coastline encompassing Pago Pago Harbor. This regulated area extends from the surface of the water to the ocean floor.

(b) Enforcement period. This rule will be enforced from 10:00 AM to 4:00 PM on November 11, 2016 and from 10:00AM to 4:00 PM on November 25, 2016.

(c) Regulations.

(1) All persons and vessels not registered with the sponsor as participants or support/enforcement vessels are considered spectators. The “support/enforcement vessels” consist of any territory, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Honolulu to patrol the safety zone.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the safety zone during the enforcement dates and times, unless cleared for entry by or through a support/enforcement vessel.

(3) Spectator vessels may be moored to a waterfront facility within the safety zone in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the safety zone and remain moored through the duration of the event.

(d) Informational Broadcasts. The safety zones shall be effective between 10:00 AM and 4:00 PM (SST) on November 11 and 25, 2016. If circumstances render enforcement of the safety zone unnecessary for the entirety of these periods, the Captain of the Port or his designated representative will inform the public through broadcast notices to mariners that the safety zone is no longer being enforced. The harbor will remain closed until the Coast Guard issues an “All Clear” for the harbor after the race has concluded and the harbor is deemed safe for normal operations.

(e) Penalties. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1232.

Dated: August 23, 2016

M.C. LONG,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu

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